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October 16, 2018

By ECF and email

Honorable Loretta A. Preska
Senior United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: United States v. Moshe Benenfeld
18 CR 485 (LAP)

Dear Judge Preska:

I respectfully submit this letter to request an adjournment of the presently-scheduled court conference/plea date of October 29th to a date in late November or early December that is convenient for the Court and counsel for my client Moshe Benenfeld to enter his plea to the one-count indictment charging him in this case. My application has the consent of AUSA Dina McLeod.

The additional time is required to complete the ongoing plea negotiations with the government, which have taken time due principally to the need for my client and me to review the voluminous electronic discovery provided by the government, particularly as that discovery pertains to the sentencing guidelines calculus. I believe AUSA McLeod would agree that we are on the cusp of finalizing that agreement.

However, I am requesting a longer adjournment of the plea proceedings than would normally be required to sign-off on a written plea agreement because I am undergoing surgery this coming Monday, October 22nd, which I only learned I needed about 2 weeks ago. Although my prognosis for recovery is excellent, my surgeon advised that my recuperation period will take at least 2 weeks, if not longer.

From day one when he became aware of the underlying criminal investigation more than 2-1/2 years ago, Mr. Benenfeld has been prepared to accept responsibility for his misconduct and cooperated with Apple Bank's attorneys in that regard. From the inception of this criminal case against him in July, he never deviated from his decision that he would plead guilty to his

criminal offense of bank fraud. The added factor that has taken more time than would be expected, given Mr. Benenfeld's determination to enter a guilty plea rather than fighting the charge against him, is his immobility and confinement to a wheelchair. He cannot walk due to the confluence of his documented serious ailments, which requires frequent hospital treatments and a regular regimen of needed physical therapy. Given that he can only travel in a wheelchair-accessible vehicle, it makes it much harder for him than the average person to get from his home in Long Island to Manhattan to meet me for consultations and discovery review (which is subject to the Court's protective order that I must always be present for that review and maintain possession of the sole discovery flash drive).

I have discussed this requested adjournment with Mr. Benenfeld. He agrees to it and he understands and waives continued computation of the speedy trial period from this date to the date of the adjourned plea proceedings to allow for continued plea negotiations and in the interest of justice based on the reasons set forth above.

I thank Your Honor for your courtesy and consideration of my requested adjournment.

Respectfully submitted,

Ephraim Savitt

Ephraim Savitt, Esq.

cc: Clerk of the Court (LAP)
AUSA Dina McLeod